Office of the Commissioner of Official Languages | Commissariat aux langues officielles

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FOR IMMEDIATE RELEASE

The administration of justice in both official languages: The obligations of federal crown agents.

The Commissioner of Official Languages, Dr. Dyane Adam, published a study today that examines how the federal Department of Justice takes its linguistic obligations into account when it authorizes a lawyer in private practice to represent it, in either civil or criminal cases. The study deals with the current situation in New Brunswick, but it also has national significance. This is because the administrative procedure used by the Department of Justice to co ordinate the network of agents and inform them of their linguistic obligations is the same all across the country.

In the study, the Commissioner identifies a number of problems and makes recommendations to the Department of Justice for improving the existing system. "I particularly stress the importance of ensuring that the Crown informs the agents it selects of their linguistic obligations to the public and the parties. In addition, the Crown must put in place a system for appointing these agents that allows for complete respect for the language rights of all the parties concerned," Dr. Adam said.

Dr. Adam specifically emphasizes the importance of clearly identifying, from the start of proceedings, the preferred official language of persons who may be subject to criminal prosecution or against whom civil action may be taken in a federal tribunal. Doing so would result in better evaluation of linguistic requirements when Crown agents are selected.

The Office of the Commissioner of Official Languages decided to conduct this study because of a number of problems brought to its attention in recent years. In these cases, accused persons and their representatives in criminal cases, as well as parties to civil actions in federal tribunals, experienced problems in obtaining legal services in their language from Crown agents. The Commissioner noted that the Department of Justice is currently revising its directives and hopes that her recommendations can be taken into account as part of this revision.

This study is the third in five years conducted by the Office of the Commissioner concerning the status of official languages in the administration of justice. The Commissioner is still waiting for the full implementation of the recommendations made in the 1995 and 1999 studies. "I attach great importance to the need to define as clearly as possible administrative and legislative measures to ensure that Canadians can use their preferred official language at all stages of the judicial process. I am confident that the Department of Justice will pay special and urgent attention to this issue," Dr. Adam concluded.

-30-

Information

Recommendations made by the Commissioner of Official Languages

1. THAT the Department of Justice put in place an effective procedure for determining, at the start of proceedings, the official language of the file; that is, the preferred official language of the accused in criminal cases and that of the civil party before a federal court in civil cases (for example, by using a form). The purpose of this would be to enable the Department to appoint a Crown agent who can proceed with the file in that language.

2. THAT the Department of Justice amend the existing *Instructions* in order to fully inform Crown agents of the specific rights and obligations relating to official languages in connection with legal proceedings; that is, the rights and obligations set out in Part XVII of the *Criminal Code* and in Parts III and IV of the *Official Languages Act*. When this amendment is made, the Department should emphasize to all Crown agents the importance of respecting the language obligations of Part III of the *Official Languages Act* and Part XVII of the *Criminal Code* and the language obligations arising thereby with regard to service to the public, as set out in Part IV of the *Official Languages Act*, as well as the need for Crown agents to respect all these federal language obligations when they are applicable, regardless of provincial laws.

3. THAT the Department of Justice, more specifically, amend the wording of its *Instructions* to ensure that, in the case of file transfers in civil matters, Crown agents are clearly informed of their obligation to advise the Department when they cannot proceed with the file for linguistic reasons.

4. THAT the Department of Justice put in place an effective procedure to enable Crown agents to communicate with the Department of Justice in their preferred official language and obtain pertinent documentation in that language, specifically, documentation concerning the *Conditions of Appointment* of Crown agents.

Administration of justice - Statutory official language rights and obligations in federal law

a. Language obligations applicable to criminal proceedings under Part XVII of the *Criminal Code* - Accused persons have the right to be tried before a judge, or judge and jury, who speak their preferred official language, as well as the right to have a Crown counsel or Crown agent who speaks their official language.

b. Language obligations applicable to civil proceedings in federal courts under Part III of the *Official Languages Act* - Article 18 of the *Official Languages Act* imposes the duty on the federal Crown (where it is a party to civil proceedings before federal courts) to use the official language of the other parties in any oral or written pleadings.

c. Language obligations applicable to communications with the public and the provision of services under Part IV of the *Official Languages Act* - The Department of Justice must respect the right of the public to communicate and receive available services in the official language of their choice. The Department must also ensure that third parties acting on its behalf (i.e. federal Crown agents) are in a position to respect these rights.

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